ORIGINAL

Supreme Court, U.S.
FILED
NOV 24 2000
CLERK

No. 00-668

IN THE
SUPREME COURT OF THE UNITED STATES

JANET RENO, ET AL.,

Petitioners,

v.

YOUR KHORN,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent Your Khorn, pursuant to Supreme Court Rule 39 and 18 U.S.C. § 3006A(d)(7), asks leave to file his Response by Respondent to Petition for Writ of *Certiorari* to the United States Supreme Court without prepayment of costs, and to proceed *in forma pauperis*.

On October 7, 1999, the Federal Public Defender for the Western District of Washington was appointed by the United States District Court for the Western

District of Washington to represent Your Khorn in the underlying civil case and on appeal to the Ninth Circuit Court of Appeals. This appointment was made pursuant to 18 U.S.C. § 3006A(a)(2)(B). Leave to proceed *in forma pauperis* has not been sought in any other court.

At the time of the appointment, Mr. Khorn had no assets or money. Mr. Khorn was detained by the Immigration and Naturalization Service throughout the proceedings in the district court. Since his release on February 14, 2000, Mr. Khorn has resided with his mother in Seattle, Washington. He continues to be indigent and unable to finance the costs of this opposition to petition for writ of *certiorari.*

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WHEREFORE, the respondent, by and through the undersigned, respectfully prays for leave to proceed in the Supreme Court of the United States *in forma pauperis.*

DATED this 22nd day of November, 2000.

Respectfully submitted,

Jennifer E. Wellman
Assistant Federal Public Defender
Counsel of Record

Jay W. Stansell
Assistant Federal Public Defender

Federal Public Defender's Office
Western District of Washington
1111 Third Avenue, Suite 1100
Seattle, WA 98101
(206) 553-1100

Attorneys for Respondent Your Khorn

Supreme Court, U.S.
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No. 00-668

In The Supreme Court of the United States

JANET RENO, Attorney General of the United States; ROBERT S. COLEMAN, JR., District Director of the Immigration and Naturalization Service, Seattle; and the UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, PETITIONERS

v.

YOUR KHORN, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT TO PETITION FOR A WRIT OF *CERTIORARI*

THOMAS W. HILLIER, II
Federal Public Defender
for the Western District of Washington

JAY W. STANSELL
Assistant Federal Public Defender

JENNIFER E. WELLMAN
Assistant Federal Public Defender
Counsel of Record

1111 Third Avenue, Suite 1100
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(206) 553-1100
Counsel for Respondent

QUESTION PRESENTED FOR REVIEW

Whether, under 8 U.S.C. § 1231(a)(6), the Attorney General has the statutory authority to indefinitely detain a long-time resident alien of the United States beyond the 90-day removal period even if the deportation order cannot be effectuated in the reasonably foreseeable future.

Whether, if the Attorney General has the statutory authority to detain a long-time resident alien of the United States without time limitation under 8 U.S.C. § 1231(a)(6), that provision violates Your Khorn's Fifth Amendment Due Process rights because his deportation cannot be effectuated in the reasonably foreseeable future and, even if his deportation was foreseeable, he is not a danger to the community or a flight risk.

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IN THE SUPREME COURT OF THE UNITED STATES

No. 00-668

JANET RENO, et al., PETITIONERS
v.
YOUR KHORN, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT TO PETITION FOR A WRIT OF *CERTIORARI*

OPINIONS BELOW

The petition for *certiorari* correctly cites to the unreported district court and Court of Appeals opinions below. App. A & B to Pet. for Cert. 1a-7a.

STATUTORY, REGULATORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The petition for *certiorari* correctly cites the statutory and regulatory provisions involved in the case, 8 U.S.C. § 1231(a)(6), 8 C.F.R. §241.4, and § 1231(a)(3). The additional statutory provision governing Mr. Khorn's release is 8 U.S.C. § 1253(b) which provides:

> An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

The constitutional provision involved is the Fifth Amendment Due Process Clause which provides, in relevant part: "No person shall . . . be deprived of life, liberty or property, without

due process of law[.]"

STATEMENT

The lower court opinions correctly set forth the facts of the case and the procedural background. Pet. for Cert. 1a-7a.

By writ of habeas corpus, Mr. Khorn challenged on statutory and federal constitutional grounds his ongoing detention by the INS because his deportation order cannot be effectuated in the reasonably foreseeable future, if ever. Both of the lower courts ruled in Mr. Khorn's favor. The Court of Appeals affirmed the grant of Mr. Khorn's writ of habeas corpus based on the circuit's decision in *Ma v. Reno,* 208 F.3d 815 (9th Cir.), *pet. reh'g denied* (June 2, 2000), *cert. granted,* 121 S.Ct. 297, 69 USLW 3086 (U.S. Oct. 10, 2000) (No. 00-38). In light of the grant of *certiorari* in *Ma*, Mr. Khorn waives his right to file a Brief in Opposition. Mr. Khorn does not thereby waive any objections to the government's recitation of the facts which are either inaccurately stated in, or omitted from, the petition for *certiorari.*

ARGUMENT

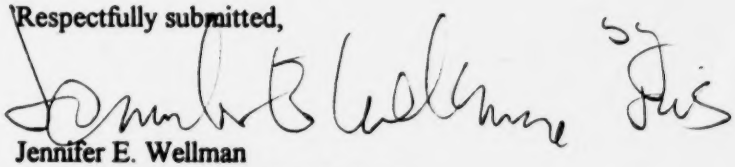
The questions presented by this case are whether the Attorney General has the statutory authority to detain a long-time resident alien of the United States whose deportation order cannot be effectuated in the reasonably foreseeable future, if ever, and if so, whether that detention runs afoul of Mr. Khorn's substantive due process rights under the Fifth Amendment of the United States Constitution. These same issues are presented in *Ma v. Reno,* 208 F.3d 815, and *Zadvydas v. Underdown,* 185 F.3d 279 (5th Cir. 1999), *cert. granted,* 121 S.Ct. 297, 69 USLW 324, 69 USLW 3257 (U.S. Oct. 10, 2000) (No. 99-7791), in which the Court granted *certiorari* review on October 10, 2000.

Accordingly, Mr. Khorn does not waive any objections to the government's recitation of the proper legal analysis in Mr. Khorn's case. He nevertheless agrees with the government that consideration of the government's petition in this case should be held pending the Court's decision in *Ma* and *Zadvydas*.

CONCLUSION

The petitioners' petition for *certiorari* should be held pending this Court's decision in *Reno v. Ma*, No. 00-38, and *Zadvydas v. Underdown*, No. 99-7791, and then disposed of as appropriate in light of the decisions in those cases.

Respectfully submitted,



Jennifer E. Wellman
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Jay W. Stansell
Assistant Federal Public Defender

Thomas W. Hillier, II
Federal Public Defender for the
Western District of Washington

Counsel for Respondent, Your Khorn

November 22, 2000

FEDERAL PUBLIC DEFENDER
Western District of Washington

November 22, 2000

VIA FEDERAL EXPRESS

The Honorable William K. Suter
Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Re: *Janet Reno, et. al., Petitioners v. Your Khorn, Respondent,* No. 00-668, Respondent's Response to Petition for *Certiorari* and Motion for Leave to Proceed *In Forma Pauperis*

Dear Mr. Suter:

Enclosed please find an original and ten copies of Response by Respondent to Petition for a Writ of *Certiorari* along with an original and ten copies of Respondent's Motion to Proceed *In Forma Pauperis* and Certificate of Service by mail for both documents for filing in the above-cited case.

Very truly yours,

Thomas W. Hillier, II
Federal Public Defender for the Western District of Washington

Jay W. Stansell
Assistant Federal Public Defender

Jennifer E. Wellman
Assistant Federal Public Defender
Counsel of Record

Attorneys for Your Khorn

cc: Seth Waxman, Solicitor General
Enclosures (as stated).

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